



**SOCIETY FOR TAX
ANALYSIS & RESEARCH**

GST - Real Estate Amendments

as effective from 1.4.2019

April 5, 2019

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Agenda



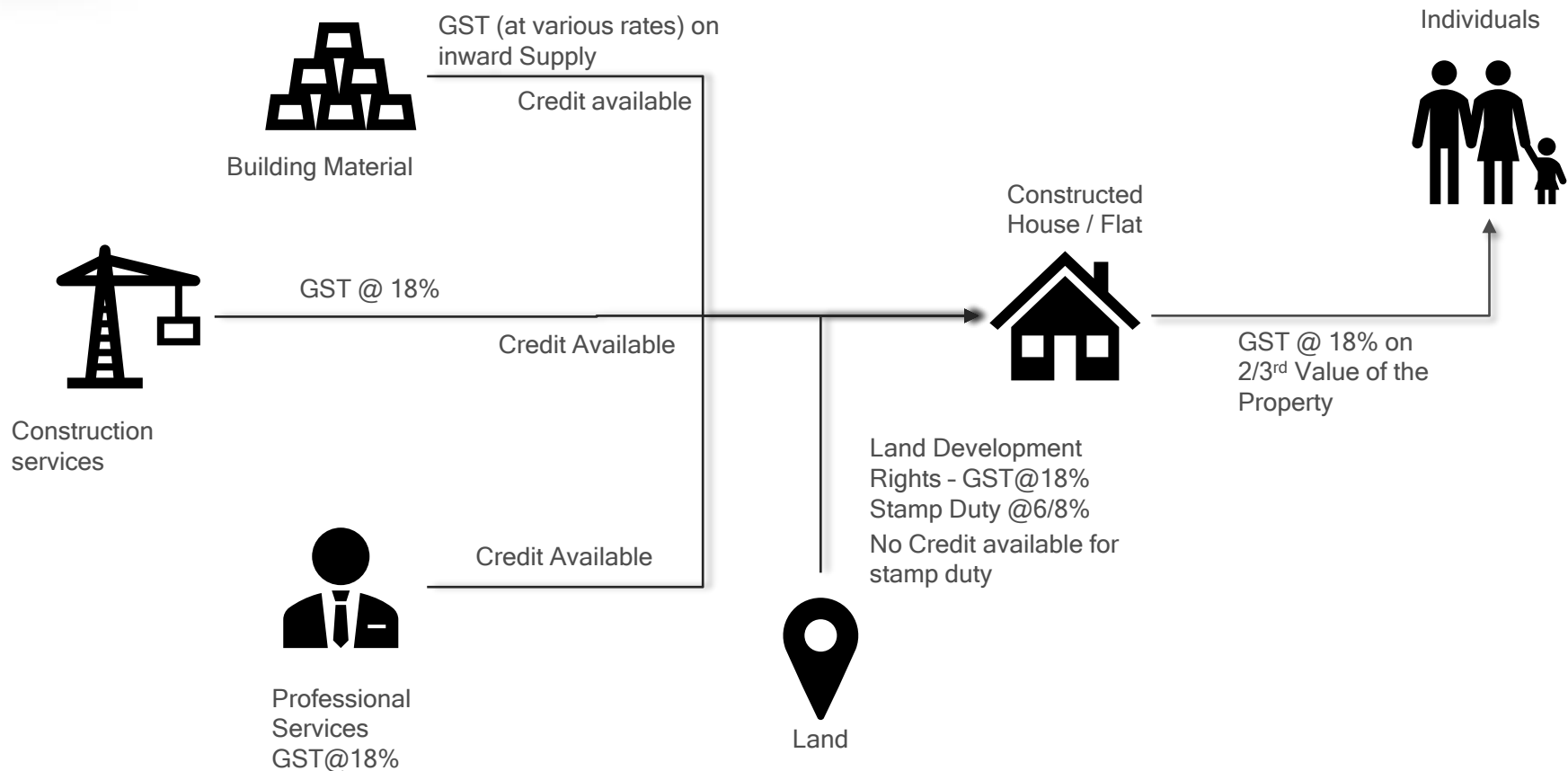
- Current Indirect tax regime
- Effective rate of taxes on real estate sector before 1.4.2019
- Amendments as brought out in rates for Developers w.e.f. 1.4.2019
- Amendment in ITC provisions
- Issues and Concerns

Current GST Implications





Current Implications on Construction Sector





Applicable Rates as on 31.3.2019

Transaction	Taxability	Input Tax Credit
Sale of constructed properties (i.e. after issuance of completion certificate with share of land)	Non taxable	Not Available
Sale of under construction properties (i.e. before issuance of completion certificate with share of land)	Taxable @18% on part value excluding Land Value. Effective Rate 12%	Available
Sale of under construction - affordable housing (i.e. before issuance of completion certificate with share of land)	Taxable @12% on part value excluding Land Value	Available
Sale of under construction commercial property(i.e. before issuance of completion certificate)	Taxable @18% on part value excluding Land Value	Available
Construction of Single residential unit	Taxable @12%	Available
Construction of Multiple residential unit	Taxable @18%	Available



Applicable Rates as on 31.3.2019

Transaction	Taxability	Input Tax Credit
Construction for Government	Taxable (rate varies)	Available
Labour supply for construction	Taxable @18%	Available
Construction of specified structures like roads, "Beneficiary led individual house construction/enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, ETP, Cremation ground etc.	Taxable @12%	Available
Construction pertaining to railways, specified post harvest mechanised system etc.	Taxable @18% on part value excluding Land Value	Available
Re-sale of properties	Non Taxable	Not Available
Commission earned on real estate transactions	Taxable @18%	Available



The Amendment

- 6 Notifications - Notification No. 3 to 8/2019-Central Tax (Rate) all dated 29th March, 2019
- Parallel notifications in UTGST, IGST and State Acts
- 1 Notification No. 16/2019 - Central Tax dated 29th March, 2019 amending the CGST Rules, 2017



The Amendment

- Rates changed for developer of residential properties only
- No change of rates for developer of commercial properties
- No change of rates for Construction contractors
- No change of rates for Government contractors



The Amendment

THE CHANGE

S.No.	Particular	Old Rate	New Rate
1.	Construction of residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing project	12% (ITC Available)	5%(ITC not Available)
2.	Construction of affordable residential apartments by a promoter in a Real Estate Project (herein after referred to as REP) other than RREP, which commences on or after 1st April, 2019 or in an ongoing project	8% (ITC Available)	1% (ITC not Available)

Developers of the ongoing residential projects have one time option to choose old tax rates - choice to be opted by May 10, 2019



The Amendment

THE CHANGE

S.No.	Particular	Old Rate	New Rate
3.	Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in a RREP which commences on or after 1st April, 2019	12% (ITC Available)	5%(ITC not Available)
4.	Construction of commercial apartments by a promoter in a REP other than RREP	12% (ITC Available)	12% (ITC Available)
5.	Construction of pure commercial apartments		

Developers of the ongoing residential projects have one time option to choose old tax rates - choice to be opted by May 10, 2019



The Amendment

THE NEW RATES

S.No.	Particular	New Rate
1.	Pure residential - Affordable	1%(No ITC)
2.	Pure residential - other than Affordable	5%(No ITC)
3.	Pure Commercial	12%(ITC)
4.	Mixed project (Commercial <15%)	Affordable - 1% Other units - 5% (No ITC)
5.	Mixed Project - others	Residential - 1% / 5% Commercial -12%

Developers of the ongoing residential projects have one time option to choose old tax rates - choice to be opted by May 10, 2019



Applicable Rates as on 31.3.2019

Transaction	Taxability	Input Tax Credit
Subcontractor to Developer - Commercial	18%	Available
Subcontractor to Developer - Affordable housing (more than 50% area) under new scheme	12%	Available
Subcontractor to Developer - Other housing	18%	Available



The Amendment

Important Definitions:

- “ongoing project” shall mean a project which meets all the following conditions:
 - Where commencement certificate is required to be issued by the competent authority, has been issued on or before 31.3.2019, and it is certified by any of the following that construction of the project has started on or before 31.3.2019:-
 - an architect
 - a chartered engineer; or
 - a licensed surveyor of the respective local body
 - where commencement certificate is not required to be issued, it is certified by any of the authorities specified above that construction of the project has started on or before the 31.3.2019;
 - completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
 - Apartments have been booked on or before 31.3.2019
 - Construction means earthwork for site preparation for the project has been completed and excavation for foundation has started



The Amendment

Important Definitions:

- an apartment booked on or before the 31st March, 2019 shall mean an apartment which meets all the following three conditions, namely-
 - part of supply of construction of which has time of supply on or before the 31st March, 2019 and
 - at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and
 - an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019;
- Affordable residential apartment
 - having carpet area not exceeding
 - 60 square meter in metropolitan cities or
 - 90 square meter in other cities
 - for which the gross amount charged is not more than 45 Lakhs
 - Gross amount shall include land value, construction value and any other charge made by developer from buyer



The Amendment

Important Definitions:

- Metropolitan Cities are
 - Bengaluru,
 - Chennai,
 - Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad),
 - Hyderabad,
 - Kolkata and
 - Mumbai (whole of MMR).



The Amendment

- “project which commences on or after 1st April, 2019” shall mean a project other than an ongoing project;
- Developers of the ongoing residential projects have one time option to choose old tax rates - choice to be opted by May 10, 2019.
- Such option to be exercised in the Form at Annexure IV
- Invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.
- The total eligible credit would be computed mainly on the basis of following three parameters as on 31-03-2019 viz -
 - Percentage of booking
 - Percentage of invoicing and consideration received
 - Percentage of completion of construction



The opening ITC

Case I - REP with completion more than 0%

- ITC to be reversed = Total ITC availed from 1st July, 2017 to 31st March, 2019 minus eligible ITC
- Eligible ITC = ITC eligible towards commercial + ITC eligible towards residential
- ITC eligible towards commercial = Total ITC X proportionate commercial carpet area
- ITC eligible towards residential =
 - Total ITC X
 - proportionate residential carpet area X
 - Proportion of Carpet area of apartments booked as on 31.3.2019 X
 - Proportion of Time of supply lying as on 31.3.2019 X
 - (1/Percentage of construction as on 31.3.2019)



The opening ITC

Case II - REP with completion 0%

- ITC to be reversed = Total ITC availed from 1st July, 2017 to 31st March, 2019 minus eligible ITC
- Eligible ITC = ITC eligible towards commercial + ITC eligible towards residential
- ITC eligible towards commercial = Total ITC X proportionate commercial carpet area
- ITC eligible towards residential =
 - Total ITC X
 - proportionate residential carpet area X
 - Proportion of Carpet area of apartments booked as on 31.3.2019 X
 - Proportion of Time of supply lying as on 31.3.2019



The opening ITC

Certain riders:

- If %age completion > %age of invoicing by more than 25%, such gap shall be taken as 25%
- If %age invoices issued > %age of value received by more than 25%, then invoicing shall be value received X1.25
- Value of procurement > value of completion by more than 25%, then eligible tax shall be allowed based on actual per unit consumption of inputs and input services



The Amendment

- Developers of the ongoing residential projects have one time option to choose old tax rates - choice to be opted by May 10, 2019.
- Such option to be exercised in the Form at Annexure IV
- Invoices for supply of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.



The Conditions

- Tax to be paid in Cash only. ITC cannot be used for payment of 1%/5% tax.
- Tax however, shall be collected from buyer and this is not a composition scheme
- ITC not available
- In case of ongoing projects which wish to pay tax at new rates, proportionate ITC on opening stock to be reversed.



The Conditions

Purchases from registered person

- 80% of the input and input services is procured from registered person - registered supplier includes composition supplier
- Above input and input services not to include:
 - services by way of grant of development rights,
 - long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI),
 - electricity,
 - high speed diesel, motor spirit, natural gas
- Tax on purchases falling short of 80%, tax to be paid under reverse charge
- Tax on cement to be paid in all cases
- The promoter shall maintain project wise account of inward supplies
- Such shortfall to be computed at year end and shall pay by end of the quarter following the financial year. Tax on cement to be paid on monthly



The Conditions

Purchases from registered person

Total Purchase from registered person	Total purchases from unregistered person	Cement purchased from unregistered person	Reverse charge to be paid
50	50	0	30 @18%
80	20	10	10 @28%
50	30	20	20 @28% + 10@ 10%
80	20	0	Nil



TDR/ FSI

Treatment of TDR/ FSI for projects after 1.4.2019

- Supply of TDR, FSI, long term lease (premium) of land by a landowner to be taxable under reverse charge basis in the hands of developer.
- Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.
- Exemption of TDR, FSI, long term lease (premium) shall not be available in case of flats, which remain un-booked on the date of issuance of completion certificate



TDR/ FSI

Treatment of TDR/ FSI for projects after 1.4.2019

- Such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.
- The date on which builder / developer shall be liable to pay tax under RCM in respect of flats sold after completion certificate shall be the date of issue of completion certificate.
- The liability of builder to pay tax on construction of houses given to land owner in a JDA is shifted to the date of issuance of completion certificate (Notification No.06/2019-C.T(Rate) dated 29.03.2019)



TDR/ FSI

Treatment of TDR/ FSI for projects after 1.4.2019

- Value of such rights is deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.



The Concerns

- Time of supply to be adhered strictly - Any lapse in correct TOS, liability may arise in future.
- Project wise accounting - Common Expenses shall always be a problem.
- Should ITC be reversed to the extent of land value - My opinion - Yes.
- What if commercial part changes during a project - No impact on availed ITC in earlier years.
- Change of hands of a project - If project is sold to a person when the same is under construction, 5% and 1% shall become cost.
- Yearly 80% limit - choose wisely year to year purchases to meet the requisite.



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